

Exemptions granted under section 87 of the *Electricity Reform Act 2000*

Information Sheet

The *Electricity Reform Act 2000* (ER Act) requires electricity operations to be licensed unless there exists a standing exemption under the ER Act or Electricity Reform (Administration) Regulations 2000 that covers a person's operations or the Commission grants, with Ministerial approval, an exemption under section 87 of the ER Act.

It is important to note that while an exemption frees a person from the requirement to hold a licence, an exemption is not unconditional. Typically, there are criteria (definitions) that establish what operations are covered by the exemption and conditions exempted entities must comply with. If an entity does not fall within these criteria or comply with the conditions of exemption, then they are effectively operating without a licence and potentially subject to a penalty under the ER Act.

Exemptions under section 87 of the ER Act

Exemptions established by the Commission under section 87 of the ER Act are done so with the approval of the Minister. The Commission does not have the power to grant exemptions in its own right. Exemptions established under section 87 of the ER Act take one of two forms:

- an individual exemption, which is tailored to an entity's specific activities and situation including any appropriate conditions
- a class exemption where if an entity's activities fall within a particular defined type (class) of activities (the Small Scale Renewable Energy operations exemption is an example of a class exemption). This type of exemption typically does not require a person to have contact with the Commission unless the exemption requires a person to register with the Commission to be eligible for coverage. The person must also abide by any conditions attached to that exemption. It is up to a person to satisfy themselves that they fall within the activities covered by a class exemption including obtaining their own legal advice, if necessary. Class exemptions can be found in the [Register of electricity licences, exemptions and dedicated connection assets](#) on the Commission's website.

Individual exemptions under section 87

The ER Act does not specifically provide for a person to apply for an exemption. Instead, a person would apply for a licence in accordance with section 15 of the ER Act. If the Commission considers the applicant and their operations to be suitable, in accordance with requirements under section 16 of the ER Act, the Commission can then determine whether a licence or an exemption is the most appropriate outcome.

The Commission notes that the starting point of its considerations is that a licence is the appropriate outcome, but by exception, there may be circumstances where an exemption from the requirement to hold a licence is a more suitable approach to authorising a person's electricity operations. Typically, an applicant would bring these circumstances to the attention of the Commission and request the Commission consider whether an exemption would be a suitable outcome. The Commission will typically require more information (as indicated in the principles to follow) to make a decision.

The Commission uses the following set of guiding principles to assist in its considerations of whether an exemption might be an appropriate outcome:

- any person who is granted an exemption must be a suitable person having regard to equivalent considerations to those that apply under section 16(3) of the ER Act
- an exemption will only be granted where the applicant can demonstrate that the costs of licensing outweigh the benefits associated with licensing and that any potential detriment of the applicant operating under an exemption (instead of a licence) for consumers of electricity is low
- an exemption for operations that affect small customers will only be appropriate where small customers are sufficiently protected, including where the exemption conditions or market conditions are likely to ensure that small customers are supplied on fair and reasonable terms and prices
- an exemption may be appropriate where the proposed operations do not involve any material risks to the safe, secure and reliable operation of the power system, or any risks can be appropriately mitigated by conditions
- an exemption may be appropriate where the operations do not relate to an essential service and alternative regulated sources of electricity supply or other appropriate substitutes for the product or service are available to customers
- a risk-based approach will be applied to determining conditions for an exemption.

The guiding principles demonstrate how the Commission applies the objects of the ER Act and *Utilities Commission Act 2000* in making its decisions and are intended to give structure and provide transparency on the Commission's assessment of an application and ensure consistency across assessments.

The Commission notes that its licensing decisions need to be flexible in order to include new business models and enhance competition. However, facilitating the entry of innovative and new business models cannot be traded off against basic consumer protections and the secure operation of power systems, and this is reflected in the Commission's principles.

The Commission expects an applicant to understand and therefore, be able to assess the impact (financial and other resources) of requirements associated with holding and complying with the conditions of a licence. The Commission would also expect an applicant to understand its proposed operations and the market it seeks to enter to be able to articulate the benefits that it may deliver (noting the objects of the ER Act) as well as the risks associated with its operations and how and to what extent these are mitigated in the absence of licensing. The Commission would be concerned about an applicant's suitability if they were unable to demonstrate such knowledge and therefore, the relative balance between costs, benefits and risks of their operations. This would be required as part of an application seeking consideration for an exemption (rather than a licence).

Even when an individual exemption is granted, it only covers that person if they continue to meet the suitable person test and comply with the conditions of the exemption. Conditions of an exemption will typically relate to the mitigation of impacts on the power system and customers, safety and technical considerations, and information required by the Commission to conduct its functions.

The Commission cautions that an outcome (that is, the granting of an exemption) cannot be assumed given the range of factors and variation in characteristics of an applicant, their proposed operations and the power system in which the applicant will operate that must be considered. The only instance of certainty in relation to exemptions is when there is an existing standing or class exemption and a prospective participant meets the criteria for that exemption and can (and does) comply with the conditions of that exemption.

Should, in accordance with its guiding principles, the Commission determine that an exemption is a more appropriate outcome than a licence, the Commission will then consider what conditions are to be applied to the exemption with the intent of mitigating any substantive residual risks. A substantive residual risk would be one where the detriment to consumers is likely to be high, the ability to remedy the detriment is low or the industry is unlikely to provide a response (such as changes to conduct) of its own accord.

The Commission encourages potential industry participants to engage with the Commission regarding licensing requirements to ensure understanding of requirements, processes and timeframes. The Commission also recommends that potential participants review the Commission's licensing fact sheet, application checklist and electricity licence fees schedule, which are available on the Commission's [licence application](#) webpage.

For a broader understanding of the licensing regime and the Commission's approach to performing licensing functions, the Commission recommends potential industry participants read the Final Report from its Review of the Northern Territory Electricity Supply Licensing Regime (stage 1) – scope and design, available on the [Review of the Northern Territory Electricity Supply Licensing Regime \(stage 1\) - scope and design](#) webpage.